

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>GREAT AMERICAN INSURANCE COMPANY,</b>	)	
	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO. 1:05cv1213-CSC</b>
<b>v.</b>	)	
	)	
<b>TOWN OF COTTONWOOD,</b>	)	<b>JURY TRIAL DEMANDED</b>
	)	
<b>Defendant.</b>	)	

**ANSWER**

Comes now the Defendant in the above-styled cause, and for Answer to Plaintiffs' Complaint as heretofore filed states as follows:

1. Defendant admits that it is a municipal corporation located in this court's judicial district. With regard to the remainder of paragraph 1 of plaintiff's complaint, defendant asserts that it is without knowledge or information sufficient to form a belief as to the truth of same and as a result denies same.
2. The allegations contained in paragraph 2, are admitted.

3. The allegations contained in paragraph 3, are admitted.

4. The allegations contained in paragraph 4, are denied.

5. The allegations contained in paragraph 5, are denied.

6. The allegations contained in paragraph 6, are denied.

7. The allegations contained in paragraph 7, are denied.

8. The allegations contained in paragraph 8, are denied.

9. Defendant adopts its responses to the previous allegations as they are adopted and re-alleged by plaintiff in paragraph 9 of its complaint.

10. The allegations contained in paragraph 10, are denied.

11. Defendant adopts its responses to the previous allegations as they are adopted and re-alleged by plaintiff in paragraph 11 of its complaint.

12. The allegations contained in paragraph 12, are denied.

13. Defendant adopts its responses to the previous allegations as they are adopted and re-alleged by plaintiff in paragraph 13 of its complaint.

14. The allegations contained in paragraph 14, are denied.

15. The allegations contained in paragraph 12, are denied.

16. The allegations contained in paragraph 12, are denied.

17. Defendant denies that the plaintiff is entitled to any relief requested in its complaint.

### **AFFIRMATIVE AND ADDITIONAL DEFENSES**

#### **First Defense**

18. Plaintiffs' claims, separately and severally, fail to state a cause of action upon which relief may be granted.

**Second Defense**

19. Any allegations of Plaintiffs' Complaint not explicitly admitted herein are denied and strict proof is demanded to support such allegations.

**Third Defense**

20. Defendant asserts the affirmative defense of laches.

**Fourth Defense**

21. Defendant denies that it breached any duty or obligation owed to the plaintiff.

**Fifth Defense**

22. Should plaintiff's claims be deemed to include claim(s) for punitive damages, said claim(s) for punitive damages are barred by the provisions of Alabama Code (1975) §6-11-20, 6-11-21, and 6-11-27.

**Sixth Defense**

23. Defendant assert the affirmative defense of waiver which constitutes an avoidance or affirmative defense in this action.

**Seventh Defense**

24. Plaintiffs' injuries and damages, if any, were a result or consequence of supervening, independent or intervening conduct, events or acts by other persons or entities over whom Defendant had no control or right of control.

**Eighth Defense**

25. Defendant asserts the affirmative defense of estoppel.

**Ninth Defense**

26. There is no causal relation between the acts of the defendant and any injury or damage

allegedly suffered by the Plaintiffs.

**Tenth Defense**

27. Plaintiffs are not entitled to any relief requested in the Complaint.

**Eleventh Defense**

28. Said Defendant asserts and pleads sovereign immunity provided by Alabama Constitution 1901, §14.

**Twelfth Defense**

29. Defendant asserts that the allegations within the Complaint and the facts as will be developed are insufficient to invoke the jurisdiction of this Court.

**Thirteenth Defense**

30. The plaintiff has not complied with all requirements under Alabama law necessary as a condition precedent to the maintenance of this lawsuit.

**Fourteenth Defense**

31. Defendant pleads the applicable statutes of limitation.

**Fifteenth Defense**

32. Defendant reserves the right to show that the Plaintiff has and continues to have the opportunity to mitigate the damages alleged, and has failed and refuses to do so.

**Sixteenth Defense**

33. Defendant alleges that any injury or damages suffered by the Plaintiff were the result of an independent intervening cause and not the result of any alleged actions or omissions by Defendant.

**Seventeenth Defense**

34. The doctrines of collateral estoppel and res judicata bare the Plaintiff's recovery.

**Eighteenth Defense**

35. The Plaintiff is barred from recovery under the doctrine of unclean hands.

**Nineteenth Defense**

36. All decisions and actions taken by the Defendant affecting the Plaintiff were work related for the purpose in question and consistent with business necessity.

**Twentieth Defense**

37. Plaintiff's alleged damages, if any, were directly and proximately caused by Plaintiff's own conduct, and any damages, which Plaintiff has allegedly sustained, would have been sustained regardless of any act or omission of the Defendant.

**Twenty-First Defense**

38. Defendant is subject the Competitive Bid Law of the State of Alabama. Ala. Code § 41-16-50, et seq. (2000).

**Twenty-Second Defense**

39. Defendant is subject to the Alabama Public Works Law which controls all public works contracts that exceed \$50,000 and requires that such contracts be competitively bid. Ala. Code §§ 39-1-1, et seq. (2000).

**Twenty-Third Defense**

40. The contract and all labor and material made the basis of the Plaintiff's complaint in this case is subject to the Alabama Public Works Law. The contract made the basis of the plaintiff's complaint was bid and was awarded based upon and in compliance with the Alabama Public Works

Law. Ala. Code §§ 39-1-1, et seq. (2000).

**Twenty-Fourth Defense**

41. Ala. Code § 39-2-1(1) defines “Awarding Authority” as:

*Any governmental board, commission, agency, body, authority, instrumentality, department, or subdivision of the state, its counties and municipalities. This term includes, but shall not be limited to . . . any other entity contracting for public works.*

**Twenty-Fifth Defense**

42. Ala. Code § 39-2-1(5) defines “Public Works” as:

*The construction, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, repaired, renovated, or maintained on public property*  
....

**Twenty-Sixth Defense**

43. Defendant pleads the terms, conditions and any defenses contained within the public works contract made the basis of this lawsuit and any validly adopted and approved amendments thereto.

**Twenty-Seventh Defense**

44. There is no causal relation between the acts of the Defendant and any injury or damage allegedly suffered by the Plaintiff.

**Twenty-Eighth Defense**

45. Said public works project is now the basis of all of the claims made and allegations asserted by the plaintiff in the above styled lawsuit.

**Twenty-Ninth Defense**

46. Defendant asserts the affirmative defense of the assumption of the risk by Plaintiff.

**Thirtieth Defense**

47. Defendant asserts the affirmative defense of laches.

**Thirty-First Defense**

48. Defendant asserts the affirmative defense of any other matter constituting an avoidance or affirmative defense.

**Thirty-Second Defense**

49. Plaintiff's injuries and damages, if any, were a result or consequence of supervening, independent or intervening conduct, events or acts by other persons or entities over which Defendant had no control or right of control.

**Thirty-Third Defense**

50. Defendant asserts the affirmative defense of municipal immunity.

**Thirty-Fourth Defense**

51. Notwithstanding the claims sought to be asserted by the plaintiff in this lawsuit, as a matter of law, the provisions of the Alabama Public Works Law are mandatory. Ala. Code § 39-5-6 (2000).

**Thirty-Fifth Defense**

52. Notwithstanding the claims sought to be asserted by the plaintiff in this lawsuit, the Alabama Public Works law mandates that

*The courts shall not invoke or apply any principle of quantum meruit, estoppel, or any other legal or equitable principle which would allow recovery for work and labor done or materials furnished under any contract let in violation of competitive bidding requirements as prescribed by law.*

Ala. Code § 39-5-6 (2000). For limitations in the monetary amounts and legal requirements and

prerequisites for public works project add-ons and change orders allowed by the Alabama Public Works Law, see generally Alabama Attorney General's Opinions Number 2002-126; Number 2002-182.

**Thirty-Sixth Defense**

53. Defendant asserts all contractual claims and all other defenses that the defendant has or had against the original contractor, Weed Contracting Company.

**Thirty-Seventh Defense**

54. There is no causal relation between the acts of the defendant and any cost, value or damage allegedly incurred or suffered by the Plaintiff.

**Thirty-Eighth Defense**

55. Defendant asserts the affirmative defense of accord and satisfaction.

**Thirty-Ninth Defense**

56. Defendant asserts the affirmative defense of payment which constitutes an avoidance or affirmative defense in this action.

**Fortieth Defense**

57. Defendant denies that they breached any duty or obligation owed to the plaintiff.

**Forty-First Defense**

58. Defendant asserts the affirmative defense of failure of consideration.

**Forty-Second Defense**

59. Defendant asserts the affirmative defense of illegality.

**Forty-Third Defense**

60. Defendant asserts the affirmative defense of statute of frauds.



**Forty-Fourth Defense**

61. Defendant asserts the affirmative defense of the factual lack of jurisdiction.

**Forty-Fifth Defense**

62. Defendant asserts the affirmative defense of discharge of contractual obligation.

**Forty-Sixth Defense**

63. Defendant asserts the affirmative defense of estoppel by fraud.

**Forty-Seventh Defense**

64. Defendant asserts the affirmative defense of good faith.

**Forty-Eighth Defense**

65. Defendant asserts the affirmative defense of hindrance of contract.

**Forty-Ninth Defense**

66. Defendant asserts the affirmative defense of immunity.

**Fiftieth Defense**

67. Defendant asserts the affirmative defense of lack of authority.

**Fifty-First Defense**

68. Defendant asserts the affirmative defense of mitigation of damages.

**Fifty-Second Defense**

69. Defendant asserts the affirmative defense of setoff.

**Fifty-Third Defense**

70. Defendant asserts the affirmative defense of the failure of plaintiff to comply with applicable statutes.

**Fifty-Fourth Defense**

71. Defendant asserts the affirmative defense of truth.

**Fifty-Fifth Defense**

72. Defendant asserts the affirmative defense of unclean hands.

**Fifty-Sixth Defense**

73. Defendant further reserve the right to plead any other affirmative or other defenses which are not now known to the undersigned but which after further investigation or discovery may be appropriate.

**COUNTER CLAIMS**

By agreement of the parties as expressed to the Court during the telephone status conference with the court on August 4, 2006, the defendant has reserved by agreement of the plaintiff the right to assert and plead its counterclaims, whether compulsory or permissive, until a later date after the parties have made and exhausted all good faith efforts to meet and try to reach a settlement agreement in this case.

**JURY DEMAND**

DEFENDANT HEREBY DEMANDS TRIAL BY JURY ON ALL ISSUES OF AND CLAIMS MADE IN THIS CAUSE AS PROVIDED BY LAW.

Respectfully submitted,

**s/Gary C. Sherrer**

GARY C. SHERRER, ATTORNEY FOR  
THE TOWN OF COTTONWOOD  
Alabama Attorney Code No. SHE-016

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I, Gary C. Sherrer, hereby certify that on this 7<sup>TH</sup> day of August, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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**s/Gary C. Sherrer**  
OF COUNSEL

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ANSWER

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PAGE 11